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turer, sold the defendant some cloth, which the plaintiff knew was to be used in making clothes. Upon examination the cloth proved to be unfit for that purpose, and in a suit for the balance of the price it was held, that there was an implied warranty of the cloth's availability for the intended purpose. *Rhodesia Mfg. Co. v. Tombacher*, 129 N. Y. Supp. 420 (Sup. Ct., App. Term). It is usually stated that where a manufacturer contracts to supply an article which he manufactures to be applied to a particular purpose so that the buyer necessarily trusts to his judgment, the law implies an undertaking on his part that the article is reasonably suited to the known purpose; but where a known, described, and definite article is ordered, although it is stated to be required for a particular purpose, if the specified article be supplied, there is no warranty that it shall answer the particular purpose intended.⁹ Under this statement, extreme cases can be decided very easily, but there is a middle ground which it does not cover. In the law of express warranty, in order that a buyer may hold his seller, it is not necessary that he shall have relied exclusively on the warranty in making the purchase.¹⁰ Likewise, in the law of implied warranty, the buyer need not have relied solely on the judgment of the seller to claim the advantage of an implied warranty.¹¹ It is in the decision of a close case, where the buyer in part selects his own article, yet at the same time relies upon the seller's greater knowledge, that the rule, as ordinarily stated, falls short of being an accurate test. That a just result is oftentimes reached, nevertheless, by the American courts is evidenced by the decision of the principal case. But it is submitted that, to weigh a close question in the law of implied warranty accurately, the facts themselves must be balanced, and all rules or presumptions of fact must be laid aside.¹²

NATURE OF RIGHT OF LANDOWNER IN UNDERLYING OIL AND GAS. — The limited nature of property rights in fluid substances occupying underground areas is well illustrated by cases dealing with petroleum and natural gas. The problem is to give each landowner the fullest possible enjoyment of what lies within his territory, and yet to make him regard the rights of others in the common reservoir. It was early decided that oil and gas are minerals forming part of the realty,¹ and are assignable as such,² but when severed they become personalty and may be sued for in trover and replevin.³ The true extent of the landowner's rights in them was, however, long sought through imperfect analogies. "Their fugitive and wandering existence" caused them to

⁹ The above statement is substantially a quotation from the opinion of Fuller, C. J., in *Seitz v. Brewer's Refrigerating Machine Co.*, 141 U. S. 510, 518, 519.

¹⁰ See *Chicago Tel. Supply Co. v. Marne & Elkhorn Tel. Co.*, 134 Ia. 252, 258.

¹¹ *Cf. West Michigan Furniture Co. v. Diamond Glue Co.*, 127 Mich. 651; *Preist v. Last*, *supra*.

¹² For a general discussion of the subject of this note and a collection of authorities, see WILLISTON ON SALES, §§ 228-236.

¹ *Williamson v. Jones*, 43 W. Va. 562.

² *Murray v. Alfred*, 100 Tenn. 100.

³ See *Kelley v. Ohio Oil Co.*, 57 Oh. St. 317, 328; *Hail v. Reed*, 15 B. Mon. (Ky.) 479.

be called minerals *feræ naturæ*,⁴ and to be compared to wild game, but that analogy fails as a test of property rights, because while the public in general has a right to reduce wild game to possession, only those owning the surface above the deposits can bore for oil and gas.⁵ And analogies drawn from the rules governing percolating water fail because that is regarded as being evenly distributed so that every surface owner is allowed to interfere with its flow regardless of the effect on his neighbors.⁶

A recent decision of the Supreme Court of the United States recognizes the true nature of the right: that the surface owner has not really a property right in the underlying oil and gas, but only a right to reduce it to possession. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61. This case holds that a statute forbidding the waste of water drawn from artesian wells in order to collect the carbonic acid gas contained therein does not deprive the surface owners of property without due process of law. The decision is rested largely upon the authority of a previous decision by the same court sustaining the constitutionality of a statute that forbade the wasting of natural gas as a process of pumping the oil with which it was mixed.⁷ This view reaches the conclusion toward which the authorities have tended. For it has been held that oil and gas are not in the landowner's possession until he has perfected a means of taking them from the ground,⁸ and that in the absence of statute his neighbors may draw them all from under his land,⁹ so that unless he taps the common reservoir for himself he may lose his potential rights in its contents.¹⁰ By thus regarding the subterranean deposit as a common supply belonging potentially to all the surface owners, but ultimately and actually to such of them as shall draw it off, the courts have upheld the state's right to regulate the means of taking possession of it,¹¹ and to forbid its waste.¹² And in one instance without the aid of a statute, it has been held, that a man can only draw it off in a reasonable manner with due regard for the rights of other potential owners.¹³ So in the principal case the regulation of the exercise of this right of potential ownership is not a taking of property without due process, but rather a safeguarding of the rights which all the adjoining landowners have in the common supply.

NATURE OF QUASI-CONTRACTUAL RELIEF APPLIED TO VOLUNTARY PAYMENTS. — That quasi-contractual relief is equitable in its nature

⁴ See *Westmoreland & Cambria Natural Gas Co. v. DeWitt*, 130 Pa. St. 235, 249.

⁵ See *Ohio Oil Co. v. Indiana* (No. 1), 177 U. S. 190, 209.

⁶ *Chasemore v. Richards*, 7 H. L. Cas. 349; *New Albany & Salem R. Co. v. Peterson*, 14 Ind. 112. A few cases do hold that the offender must act reasonably. *Swett v. Cutts*, 50 N. H. 439.

⁷ *Ohio Oil Co. v. Indiana* (No. 1), *supra*.

⁸ *Westmoreland & Cambria Natural Gas Co. v. DeWitt*, *supra*.

⁹ *Hague v. Wheeler*, 157 Pa. St. 324.

¹⁰ See *Jones v. Forest Oil Co.*, 194 Pa. St. 379, 383.

¹¹ *Jamieson v. Indiana Natural Gas & Oil Co.*, 128 Ind. 555.

¹² *Townsend v. State*, 147 Ind. 625.

¹³ *Manufacturers Gas & Oil Co. v. Indiana Natural Gas & Oil Co.*, 155 Ind. 461.